

ST 02-23

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

ABC CORPORATION

Applicant

v.

**ILLINOIS DEPARTMENT OF
REVENUE**

No. 01-ST-0000

Sales Tax Exemption

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Richard Chapman of Fagel & Haber LLC on behalf of ABC of America; Mr. Shepard Smith, Special Assistant Attorney General on behalf of the Illinois Department of Revenue.

SYNOPSIS:

This matter arose following the protest of a Tentative Denial of Exemption issued by the Illinois Department of Revenue (“Department”) on February 20, 2001 to ABC CORPORATION (“applicant” or “ABC”). Applicant applied to the Illinois Department of Revenue (the “Department”) for an exemption identification number so that it could

purchase tangible personal property at retail free from the imposition of use and related taxes as set forth in 35 ILCS 105/1 *et seq.*

The issue to be determined at hearing is whether applicant qualifies for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable *** or educational purposes[.]” 35 ILCS 105/3-5(4). After reviewing the evidence adduced at hearing, it is my recommendation that the Department’s tentative denial of exemption be affirmed.

FINDINGS OF FACT:

1. The Department established its *prima facie* case, inclusive of all jurisdictional elements, by the admission of the Department’s Tentative Denial of Exemption. Dept. Ex. No. 1.
2. ABC CORPORATION is a non-profit corporation incorporated in the state of Illinois. Tr. p. 19. Applicant has a 501(c)(3) designation from the IRS. Tr. p. 19; Applicant Ex. No. 2.
3. ABC CORPORATION was formerly known as ABC Coalition. Tr. pp. 20, 21; Dept. Ex. No. 2.
4. ABC CORPORATION does not issue any corporate or capital stock nor does it have any shareholders. Tr. p. 21; Dept. Ex. No. 2; Taxpayer Ex. No. 35.
5. Dr. John Doe is the senior group vice-president and general counsel for ABC CORPORATION. Tr. p. 17. Doe is responsible for the knowledge and policy division of the organization. Tr. p. 18.

6. The directors of ABC CORPORATION are not compensated for attendance at the Board of Director's meetings or for any of their ongoing duties as directors. Tr. pp. 39-41.
7. ABC serves as clearinghouse of information for professionals that provide direct services to the public primarily with respect to issues relating to families and children. Tr. pp. 46, 54, 211.
8. ABC concentrates on various issues affecting families including youth development, problems resulting from gang activity, issues affecting families with dependent children and issues of domestic violence. Tr. pp. 47-49.
9. ABC provides information in a variety of ways. First, it provides an array of fact sheets on issues affecting families such as father-child relationships or youth development. Tr. p. 55. Applicant also provides information through its website and a telephone referral line. Tr. p. 55.
10. ABC CORPORATION sponsors a conference every two years. Tr. p. 78. The conference has nonprofit and for-profit sponsors. Tr. pp. 79, 80.
11. One of the purposes of the national conference is that it provides an opportunity to bring information and research to one place and attempts to disseminate it to people who work in the field to meaningfully impact the lives of family and children. Tr. p. 82.
12. At the conference there are a series of workshops on various topics. Tr. pp. 82, 83. These workshops provide information to professionals who counsel families in need. Applicant Ex. Nos. 9 & 10.

13. ABC also prepares various publications called fact sheets. Tr. p. 94. The fact sheets supply information and provide names of literature and organizations that may be accessed or that have expertise in dealing with a particular problem. Tr. pp. 94, 95. ABC produces around twenty of these fact sheets and updates them on a regular basis. Tr. pp. 94, 95. The fact sheets are mailed to members and non-members. ABC disseminates around 15,000 fact sheets a year on various topics. Tr. p. 95. The fact sheets provide information and assistance that is geared toward the professional community such as tips for practitioners including social workers, program people within state agencies, individuals within small community programs or researchers. Tr. pp. 96, 97; Applicant Ex. Nos. 13-26. ABC does not charge for the fact sheets. Tr. p. 101.
14. ABC CORPORATION publishes ABC Corporation Magazine. Tr. p. 105. The magazine creates a forum that gives practitioners an opportunity to present research and statistics about families, presents new resources for practitioners in the field and gives breaking information around policies and resources of the Federal government. Tr. p. 106. There are approximately 5,000 regular subscribers. The magazine is made available at the conferences and is sent to various programs at no charge. Tr. pp. 107, 108, 110; Applicant Ex. No. 26A.
15. ABC also publishes its own educational monographs. Tr. p. 110. The monographs discuss some of the principles and values that ABC practices as an organization and focuses on getting people to translate the value statements into practice. Tr. p. 111. ABC has published around 12 to 14 of these monographs. The organization charges a fee for purchasing them. Tr. pp. 111, 112.

16. ABC operates a website, www.Familysupportamerica.org. Tr. p. 119. ABC employs staff that works on developing and maintaining the website. Tr. p. 120.
17. One of the services the website provides is the National ABC Mapping Project. That project is an effort to collect and identify programs that are operating in the United States that promote family support practice. ABC has surveyed various programs throughout the country that work with children and families. To date they have surveyed approximately 2000 programs, and placed them geographically on a map to allow users to access what particular services are available in that state. Tr. pp. 123, 124. The website breaks down the services available by their established criteria to enable the user to specifically identify the information needed. Tr. pp. 124, 125.
18. The organizations presented are listed by name, address and expertise. Information such as the type of service and number of staff is presented as well as any links to an organization's website. Tr. pp. 125, 126; Applicant Group Ex. No. 11.
19. Total salaries paid to officers and directors during fiscal year 2000 are comparable to the salaries paid to officers and directors employed with similar national organizations. Taxpayer Group Ex. No. 37.
20. During the year ended June 30, 2001, the Statement of Activities reflects that ABC collected \$122,000 from membership dues. Tr. p. 220; Applicant Ex. No. 35. Individual members paid approximately thirty dollars a year and organizations pay one hundred dollars a year. Tr. p. 221. Total grant and contribution revenues for the year ended June 30, 2001 were \$4,603,116. Applicant Ex. No. 35. During the

year ended June 30, 2000 ABC collected \$127,375 in membership dues. Grant and contribution revenues for the year ended June 30, 2000 were \$1,034,401. Applicant Ex. No. 35.

21. One of the underlying functions of membership in ABC is to ensure that the individuals and organizations are receiving information that might assist them in their work. Tr. p. 222. There are no restrictions on who may become a member. Tr. p. 222. ABC's help desk conveys information on family issues to both members and non-members. Tr. p. 219.

CONCLUSIONS OF LAW:

The applicant seeks to qualify for a sales tax exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable *** purposes[.]" 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).¹ The applicant bears the burden of proving by "clear and convincing" evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991). To prove its case, an applicant must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App.3d 798, 804 (4th Dist. 1990). Moreover, it is well established that there is a presumption against exemption and that therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of the exemptions "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

Analyzing whether the applicant qualifies for an exemption as a charitable organization under Illinois law requires examination of Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) wherein our supreme court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old People's Home, in order to reach a finding that the applicant is organized and operated exclusively for charitable purposes, the following four factors are considered:

1. Whether the benefits derived are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter;
3. Whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and
4. Whether the exclusive use of its property is for charitable purposes.

Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-157 (1968). These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). It is apparent that the applicant meets one of

¹ The word exclusively, when used in tax exemption statutes, means "primarily." Gas Research Institute v.

the criteria in that it has no stock or shareholders and derives its funding primarily from public and private charity. Dept. Ex. No. 2; Applicant's Ex. No. 35.

In the instant matter, the Department argues that the applicant does not meet the factors outlined in Methodist Old Peoples Home v. Korzen, *supra*, because it does not dispense charity to all that need and apply for it because it is primarily a second tier service provider. Dept. Brief at 5. The Department contends that ABC constitutes a second tier service provider since ABC primarily provides services to social service agencies and personnel that in turn may provide social services to the indigent and needy. The Department argues that applicant provides its second tier services through 1) conferences, Applicant's Ex. No. 9; 2) institutes, Applicant's Ex. No. 10; 3) fact sheets, Applicant's Ex. Nos. 13-26; 4) magazines, Applicant's Ex. No. 26A and 5) its web site, Applicant's Group Ex. No. 11. The applicant's services are second-tier services since the venues in which they are conducted are designed primarily for social work professionals rather than the community at large.

Applying the guidelines from Methodist Old People's Home, *supra*, I find that the applicant has not presented clear and convincing evidence that the applicant "dispenses charity to all who need and apply for it." It is also not clear that ABC "reduces the burden on government," another one of the guidelines from Methodist Old People's Home, *supra*.

Since the taxpayer is primarily providing services for a particular profession it is indeed working as a second tier service provider which doesn't meet the requirements outlined in Methodist Old People's Home, *supra*. Although at hearing, the applicant's

Dept of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987).

witness, Dr. Doe, testified that ABC provides some services to individuals through its fact sheets and website, it is impossible to deduce what percentage, if any, of ABC's services are provided to individuals in need rather than to the professional community, since no corroborating documentation or statistical data was presented by the applicant on this issue. Taxpayer also argued that it produces information based upon its own research, (Tr. pp. 54-56), though it is unclear what taxpayer meant by this since the record indicates that ABC primarily serves as a clearinghouse of information by gathering this information from various sources for practitioners' easy access. Tr. pp. 95-97.

Further, although taxpayer argues that it should be given exempt status despite its role as a second-tier service provider, upon reviewing the record, it cannot even be determined with certainty what organizations and practitioners are the first-tier service providers primarily served by the taxpayer. It is important to note that although taxpayer's witness testified that ABC has approximately 1500 members, taxpayer did not offer a membership list into evidence. At hearing, taxpayer focused on the information it provides to charitable organizations and government agencies, however, it is uncertain that its members are primarily charitable organizations and government agencies.

Many practitioners in this field, of course, do not dispense charity to the public. Some social work professionals and psychologists work for fees, and if they are not paid these fees, a patient does not receive his or her services. One must only peruse through the Chicagoland telephone directory yellow pages to see numerous listings of social workers and psychologists who do not advertise employment with a charitable

organization but are, rather, working in private practice. It is not unreasonable to conclude that they charge and proceed to collect fees from their patients or clients. How many of these practitioners are members of ABC is unclear since taxpayer did not provide a member list, a list which should be readily available.

In order to determine whether the taxpayer dispenses charity to all who need and apply for it, the taxpayer must disclose all the users of the information. In exemption cases it is essential to present documentary evidence to support the claim of entitlement to an exemption. Merely offering the unsubstantiated testimony of taxpayer's witness at hearing without corroborating documentary evidence, which should be available, is not sufficient to meet the taxpayer's burden of proving its entitlement to the exemption since exemption provisions are strictly construed. Sprague, at 804. While ABC may perform beneficial acts, this alone is insufficient to warrant granting a tax exemption. Tax exemptions are to be strictly construed since they are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). These lost public funds may, in fact, be otherwise used to fund state programs which benefit individuals in need.

Applicant also argues that it is dispensing charity to the public by providing information through its website. There is no proof, however, that the website is actually used by individuals facing social service issues. In fact, a review of the website reveals that the information on it is aimed toward practitioners. For example, one of the pages on technical assistance offers to bring ABC's knowledge and skills to community groups whether it is "starting a family support center, improving existing programs, establishing

a network of providers in your region, or funding and administering family support programs, our knowledgeable professionals help you reach your goals and bring the principles of family support practice into your work.” Applicant Group Ex. No. 11, p. 4. Further, there is no statistical data on whether the website is primarily accessed by professionals and organizations who, themselves, are even charitable in nature. Accordingly, taxpayer has failed to meet its burden in showing its entitlement to the exemption by proving that it dispenses charity through its website. Sprague, at 804.

Likewise, the information provided on the fact sheets produced by the applicant is geared towards social work professionals and not individuals in need. For example, the fact sheet entitled “Family Support and Domestic Violence” (Applicant Ex. No. 13) includes a column on “Tips for Practitioners” and the main body of the fact sheet addresses how family support programs must be prepared to respond to domestic violence, breaking down the issue into paragraphs dealing with “Working With Victims” and “Working With Perpetrators.” It then lists different program models and outlines each program’s approach in dealing with that particular family issue and it also lists publications, many of which are guides for group programs or strategies to help a professional deal with that particular family issue in accordance with ABC’s philosophy. See, Applicant Ex. No. 13. The other fact sheets provided by applicant include similar information including providing tips for practitioners and each discusses the role of family support programs in addressing the particular family issue which is the subject of that fact sheet. See, Applicant Ex. Nos. 14-26.

Although applicant maintains that the fact sheets are made available to the public and it mails out approximately 15,000 fact sheets, applicant failed to break down this

mailing to show how many of these are mailed to practitioners in private practice, to community groups, and to government employees, rather than individuals in need. It also failed to disclose how many of the practitioners are actually dispensing charity versus those that are in private practice and are working for fees

Similarly, the magazine produced by ABC, “ABC Corporation,” (Applicant Ex. No. 26A) is also aimed toward professionals and not toward individuals facing domestic crisis, with articles ranging from “Supporting Single Parents During the Holidays ... Here’s how your center can help them create new family rituals.” (*id.* at 48), to “Helping Families Cope with Tragedy... strategies to help families cope in the aftermath of the events of September 11,” (*id.* p. 10) and “The Maternal Mental Health Crisis, Treating and Preventing Postpartum Depression.” *Id.* at 23. Once again, taxpayer did not offer ABC’s mailing list into evidence to prove that the individuals and organizations that receive the fact sheets and the magazine are primarily charitable in nature. Without such, taxpayer failed to meet its burden of proving that it is entitled to the exemption because it dispenses charity to all those in need through its fact sheets and magazine. *See, Sprague*, at 804.

The conferences sponsored by ABC on April 26-29, 2000, and March 18-20, 2001, (Applicant Ex. Nos. 9, 10), were also primarily geared toward professionals in the field. This is evidenced by the conference schedule which for the most part lists workshops, programs and training seminars that attempt to educate practitioners and offer strategies that enable practitioners to implement the values of ABC. *Id.* at 8.

Upon reviewing the evidence of record, it is clear that the primary purpose of the applicant is not dispensing charity to the public by caring and counseling for individuals

facing crisis. Instead, taxpayer's primarily purpose is to align the programming available to private practitioners and various organizations and agencies in the field with the applicant's values. It has not presented the type of clear and convincing evidence necessary to establish that it dispenses "charity" to all who need and apply for it. First, because it is engaged in providing services to a profession not those in need as required by the Methodist Old People's Home guidelines and second, because it even failed to prove that the first-tier professionals it provides information to are primarily engaged in dispensing charity.

Finally, while it is obvious that ABC provides seminars and information for social work professionals, it is difficult to conclude that the burdens of government are "lessened" based upon the record. Although Dr. Doe testified that these workshops may be offered free of charge to state employees, taxpayer failed to meet its burden because corroborating documentary evidence to support this conclusion was not offered. Thus, it is unknown how many government employees or community center employees, if any, actually received training free of charge. *See, Sprague*, at 804. The record does indicate though, that ABC has contracted with DCFS in the past, for example, to provide services to the agency. There is no evidence to suggest, however, that this agreement was not an arm's length contract and for competitive fees.

Further, if ABC did not provide these seminars and workshops, it is not evident that public interest would dictate that the State of Illinois would be required to meet the demand. There is no requirement that the state agencies must conduct seminars of this nature for private professionals and various organizations and agencies, so ABC's actions are not lessening the burdens of government. One thing is certain, however - ABC has

not provided clear and convincing evidence that its actions reduce the government's real burden of directly caring for and counseling individuals facing domestic crisis.

For the reasons stated above, the Tentative Denial of Exemption should be affirmed.

Date: July 25, 2002

Christine O'Donoghue
Administrative Law Judge